

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: May 31, 1995

TO : William C. Schaub, Jr., Regional Director
Region 7

FROM : Barry J. Kearney, Acting Associate General Counsel
Division of Advice

SUBJECT: Local 580, International Brotherhood of Teamsters, AFL-CIO
Case 7-CA-36726

530-8045-2900
530-8045-5700
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This case was submitted for advice as to whether the union Employer, with newly elected officers, violated Section 8(a)(5) of the Act by refusing to honor a collective-bargaining agreement, covering its business agents, that was negotiated by the Employer's former officers who lost the recent election.

FACTS

Local 580, International Brotherhood of Teamsters, AFL-CIO (the Employer) is a local Teamsters union with approximately 2000 members located in Lansing, Michigan. Local 580's operations are overseen by its elected Executive Board, which consists of: (1) the Secretary-Treasurer (described in Local 580's bylaws as Local 580's "principal executive officer"); (2) the President; (3) the Vice-President; (4) the Recording Secretary; and (5) three Trustees.

Local 580 employs a staff, including several Business Agents appointed by the Secretary-Treasurer. Business Agents have traditionally been removable by the Secretary-Treasurer at will. Local 580's bylaws provide that the [FOIA Exemptions 6 and 7(c)] "shall have the power to appoint, suspend, or discharge all appointive employees, including Business Agents." The International Brotherhood of Teamsters Constitution provides that, "Appointed Business Agents or appointed Assistant Business Agents may be removed at will only by the appointing authority."

In October 1991, [FOIA Exemptions 6 and 7(C)], a [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)], was

elected [FOIA Exemptions 6 and 7(C)].¹ In the Summer of 1994, [FOIA Exemptions 6 and 7(C)] appointed [FOIA Exemptions 6 and 7(C)] to be [FOIA Exemptions 6 and 7(C)], after the resignation of the incumbent, [FOIA Exemptions 6 and 7(C)].² [FOIA Exemptions 6 and 7(C)] continued to serve as a [FOIA Exemptions 6 and 7(C)]. Local 580 also employed two other [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)]. In August 1994,³ [FOIA Exemptions 6 and 7(C)], announced that he would run for [FOIA Exemptions 6 and 7(C)] as the head of his [FOIA Exemptions 6 and 7(C)] opposing [FOIA Exemptions 6 and 7(C)]. The vote, by mail ballot, was scheduled to be counted on December 14.

In October, the [FOIA Exemptions 6 and 7(C)] who did not hold elected office with Local 580, [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)], apparently began discussing the possibility of organizing a union to represent them in negotiations with their employer, Local 580. On November 2, one or both of these [FOIA Exemptions 6 and 7(C)] presented [FOIA Exemptions 6 and 7(C)] with a letter requesting recognition. Toward the end of November, [FOIA Exemptions 6 and 7(C)] apparently told [FOIA Exemptions 6 and 7(C)] that [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] "Business Agents Association" (BAA) was going to file an NLRB petition to "cover themselves." On November 30, Local 580's Executive Board voted to authorize [FOIA Exemptions 6 and 7(C)] to begin negotiations for a collective-bargaining agreement with the BAA.⁴

Also on November 30, the BAA filed its RC petition (Case 7-RC-20492) for an election in a unit that included all Local 580 Business Agents, excluding Local 580 officers.

¹ [FOIA Exemptions 6 and 7(C)] had first been appointed as [FOIA Exemptions 6 and 7(C)] in [FOIA Exemptions 6 and 7(C)] to fill the unexpired term of his elected predecessor, who was then under indictment.

² [FOIA Exemptions 6 and 7(C)] was forced to resign, apparently because of his refusal to sign Local 580's LM-2 forms.

³ All dates hereinafter are in 1994, unless otherwise noted.

⁴ [FOIA Exemptions 6 and 7(C)] abstained from voting.

After the BAA submitted a corrected showing of interest, the parties signed a stipulated election agreement on December 5 calling for an election on December 13, the day before the Local 580 leadership ballots would be counted. The Region approved the agreement the next day. On December 13, [FOIA Exemptions 6 and 7(C)] without objections, the BAA was certified on December 21.

In the meantime, [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] held bargaining sessions with [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] on December 2, 6, and 13. During these negotiations, [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] presented complete written proposals; [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] offered oral modifications, counter-proposing terms and conditions more generous than those proposed by the BAA negotiators. The parties agreed, inter alia, to: (1) a requirement of just cause for discharge; (2) a pre-selected list of arbitrators, and; (3) the retention of unit seniority for Business Agents who serve as Local 580 officers, along with bumping rights allowing them to return to their Business Agent positions. As for the modifications offered by Local 580, all of the improved terms and conditions would apply to [FOIA Exemptions 6 and 7(C)] if he availed himself of his right under the contract to return to his bargaining unit position; indeed, some of these proposals, including increases in wages and accrual and carryover of leave, could apply only to [FOIA Exemptions 6 and 7(C)] due to his length of seniority. In addition, [FOIA Exemptions 6 and 7(C)] proposed language stating that, "[i]n the event of a conflict between this Agreement and the Local Union (employer) By-Laws or the International Constitution or other like documents, this Agreement shall control" and providing for ex-parte arbitration. On December 13, immediately after the representation election, [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] signed this collective-bargaining agreement and [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] voted to ratify it. That night, the Local 580 Executive Board voted to accept the collective-bargaining agreement,⁵ which was to be effective by its terms from December 15, 1994 through December 30, 1997.

⁵ Again, [FOIA Exemptions 6 and 7(C)] abstained from voting.

On December 14, the Local 580 leadership ballots were counted; [FOIA Exemptions 6 and 7(C)] defeated [FOIA Exemptions 6 and 7(C)] by a margin of approximately two to one. By letter dated December 20, [FOIA Exemptions 6 and 7(C)] resigned as [FOIA Exemptions 6 and 7(C)], effective December 28, stating that he intended to continue in his position as [FOIA Exemptions 6 and 7(C)]. On December 28, the BAA held officer elections, with [FOIA Exemptions 6 and 7(C)] elected [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] elected [FOIA Exemptions 6 and 7(C)]. By letter dated December 31, the day before [FOIA Exemptions 6 and 7(C)] was to take office as [FOIA Exemptions 6 and 7(C)], [FOIA Exemptions 6 and 7(C)] informed [FOIA Exemptions 6 and 7(C)] that he "intend[ed] to resume the position of [FOIA Exemptions 6 and 7(C)] at Teamster Local 580 under the provisions of and pursuant to [the BAA] Collective Bargaining Agreement," effective December 31, at 11:59 p.m.

On January 3, 1995, the first workday after [FOIA Exemptions 6 and 7(C)] took office as [FOIA Exemptions 6 and 7(C)], [FOIA Exemptions 6 and 7(C)] gave [FOIA Exemptions 6 and 7(C)] memoranda informing them that they were being placed on administrative leave, that they were not authorized to act as agents or conduct any business on behalf of Local 580, and that Local 580's attorney would be reviewing the legality of the BAA collective-bargaining agreement. By letter dated January 6, 1995, each [FOIA Exemptions 6 and 7(C)] was informed that his employment was terminated and was given a check for one day's holiday pay (for New Years Day 1995) plus a \$100.00 lump sum stipend.

On January 9, 1995, the BAA filed a "class action" grievance under the BAA collective-bargaining agreement concerning the discharges. The grievance was initially set for an arbitration hearing on January 26, 1995, but this hearing was postponed upon a request of Local 580's attorney. Later in January 1995, Local 580 filed a civil action in the United States District Court for the Western District of Michigan alleging that the former members of Local 580's Executive Board violated their fiduciary duty under Section 501 of the Labor-Management Reporting and Disclosure Act by entering into the BAA collective-bargaining agreement. The lawsuit sought a declaratory

judgment that the BAA collective-bargaining agreement was void ab initio, as well as costs and attorney's fees.⁶

Also on January 9, 1995, the BAA filed the instant charge alleging the Local 580 violated Section 8(a)(1), (3), and (5) by discharging the [FOIA Exemptions 6 and 7(C)], by failing to give the BAA notice of, and an opportunity to bargain over, the discharges, and by repudiating the BAA collective-bargaining agreement. In addition, Local 580 filed a motion to revoke the BAA's certification, and a newly hired Local 580 employee associated with [FOIA Exemptions 6 and 7(C)] filed the charge in Case 7-CA-36771, alleging that Local 580 [FOIA Exemptions 6 and 7(C)] violated Section 8(a)(2) of the Act by dominating and/or assisting in the formation and administration of the BAA.⁷

The Region's investigation does not appear to have adduced any evidence that would show that Local 580 has generally refused to bargain with the BAA, or has unequivocally repudiated its collective-bargaining relationship with the BAA, other than Local 580's refusal to be bound by the December 13 collective-bargaining agreement. Nor is there evidence that the BAA has requested bargaining over any other subject, such as the effects of the discharge of the [FOIA Exemptions 6 and 7(C)] or the terms and conditions of newly hired Business Agents. The BAA did request information regarding the discharges and the validity of the December 13 collective-bargaining agreement. It is not clear whether Local 580 has ever provided this information. Finally, there is no evidence that would indicate whether the officers of the BAA intend to continue to represent the bargaining unit, which now consists

⁶ [FOIA Exemptions 6 and 7(C)] apparently has also sought a criminal investigation of [FOIA Exemptions 6 and 7(C)] for the conduct at issue herein. In addition, [FOIA Exemptions 6 and 7(C)] and [FOIA Exemptions 6 and 7(C)] have filed numerous other civil suits, internal union charges, and complaints with the U.S. Department of Labor against each other for various conduct during the 1994 Local 580 election.

⁷ The Region has not submitted to the Division of Advice the allegations arising under Section 8(a)(2) or (3), nor the issues directly relating to Local 580's motion to revoke certification.

entirely of the individuals who replaced them as [FOIA Exemptions 6 and 7(C)].

ACTION

We conclude that Local 580, and its newly elected officers, did not violate Section 8(a)(5) of the Act by refusing to honor the December 13 collective-bargaining agreement with the BAA, negotiated by Local 580's officers deposed in the recent election, because the [FOIA Exemptions 6 and 7(C)] acted ultra vires when they entered into the collective-bargaining agreement with the BAA.

Initially, we note that the only issue before us concerns Local 580's refusal to abide by the provisions of the December 13 collective-bargaining agreement with the BAA.⁸ There is no evidence that the BAA has requested bargaining over any subject, such as the effects of the discharge of [FOIA Exemptions 6 and 7(C)] or the terms and conditions of newly hired Business Agents; indeed, the officers of the BAA have shown no interest in representing the individuals who replaced them as [FOIA Exemptions 6 and 7(C)].⁹ Thus, the only question is whether Local 580 was privileged to ignore the terms of the collective-bargaining agreement [FOIA Exemptions 6 and 7(C)] signed with the BAA.

⁸ The Region requested advice as to whether there existed a sufficient conflict of interest on the part of the BAA so as to privilege a refusal to bargain by Local 580. As there has been no evidence indicating any such refusal to bargain, apart from the lawful refusal to abide by the provisions of the December 13 collective-bargaining agreement with the BAA, and as there is no evidence that the BAA has made any request to bargain on behalf of the newly hired Business Agents, we need not determine whether Local 580 might be privileged to generally refuse to bargain with the BAA at some point in the future.

⁹ Moreover, the Region has not submitted to the Division of Advice the allegations arising under Section 8(a)(2) or (3), the issues directly relating to Local 580's motion to revoke certification, or the issue of whether Local 580 violated the Act if it failed or refused to provide the information requested by the BAA regarding the discharges and the validity of the December 13 collective-bargaining agreement.

We conclude that Local 580 did not violate Section 8(a)(5) of the Act by refusing to honor the collective-bargaining agreement. The Board has held that, when union officers agree to self-serving agreements contrary to their fiduciary duty and to the union's constitution or bylaws, such agreements exceed the scope of the union officers' authority and are entered "ultra vires."¹⁰ When the other contracting parties are or should have been aware of such overstepping of authority, and thus there is no basis for finding agency based upon the apparent authority of the union officers, the Board will find that the agreements are "void ab initio."¹¹

In the instant case, it is clear that [FOIA Exemptions 6 and 7(C)] acted outside his authority when he negotiated an agreement that personally benefited himself by, inter alia, providing him with job protection whenever he unilaterally decided to retake a [FOIA Exemptions 6 and 7(C)] position. Such protection is contrary to the terms of Local 580's bylaws, which provide that the [FOIA Exemptions 6 and 7(C)] "shall have the power to appoint, suspend, or discharge all appointive employees, including Business Agents," and to the International Brotherhood of Teamsters Constitution, which provides that "Appointed Business Agents or appointed Assistant Business Agents may be removed at will only by the appointing authority." [FOIA Exemptions 6 and 7(C)] lack of good faith in negotiating the December 13 collective-bargaining agreement with the BAA is amply demonstrated by his counter-proposal of terms and conditions more generous than those proposed by the BAA negotiators, when those terms and conditions would apply to him; indeed, some of the terms and conditions would apply only to [FOIA Exemptions 6 and 7(C)] due to his long seniority. Finally, it was [FOIA Exemptions 6 and 7(C)] who proposed language stating that, "[i]n the event of a conflict between this Agreement and the Local Union (employer) By-Laws or the

¹⁰ Dominick's Finer Foods, Inc., 308 NLRB 935, 947 (1992), enf'd. 146 LRRM 2784 (7th Cir. 1994) ("Because such actions on their part were ultra vires, they were void ab initio"). In enforcing the Board's order in Dominick's Finer Foods, Inc., the Seventh Circuit specifically noted that the union officers there "acted ultra vires . . . and thus the memoranda of agreement, disclaimer of interest, and dues check-offs were all void." 146 LRRM at 2788.

¹¹ Id., 308 NLRB at 947-948.

International Constitution or other like documents, this Agreement shall control" and providing for ex-parte arbitration.¹² Considering the self-serving nature of [*FOIA Exemptions 6 and 7(C)*] proposals and the conflict between the December 13 collective-bargaining agreement and the Local 580's officers' fiduciary duty, Local 580's bylaws, and the International Brotherhood of Teamsters Constitution, we conclude that the agreement was entered ultra vires and was void ab initio. Therefore, Local 580 did not violate Section 8(a)(5) of the Act by refusing to honor the BAA collective-bargaining agreement.

Accordingly, this allegation should be dismissed, absent withdrawal.

B.J.K.

¹² The inclusion of these provisions resolves any doubt as to whether [*FOIA Exemptions 6 and 7(C)*] and [*FOIA Exemptions 6 and 7(C)*] knew or should have known that [*FOIA Exemptions 6 and 7(C)*] was acting ultra vires. Even if one were to assume that, despite their positions as [*FOIA Exemptions 6 and 7(C)*] and their involvement in union politics, they were not aware of the terms of Local 580's By-Laws and the International Brotherhood of Teamsters Constitution concerning the discharge of [*FOIA Exemptions 6 and 7(C)*], the inclusion of these provisions should have alerted them that [*FOIA Exemptions 6 and 7(C)*] was attempting to circumvent Local 580's governing documents and to benefit himself in the event he were to lose his position as [*FOIA Exemptions 6 and 7(C)*].